

Notice of Allowability**Application No.**

10/664,603

Applicant(s)

ROULEAU ET AL.

Examiner

SUE LIU

Art Unit

1639

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Supplemental Response filed on 9/19/08.
2. ☒ The allowed claim(s) is/are 14 and 35-43.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☒ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 9/19/08
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 9/26/08
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

/SUE LIU/
Patent Examiner, Art Unit 1639

EXAMINER'S AMENDMENT

Claim Status

1. Claims 1-13, 15-34 and 44-47 have been cancelled.

Claims 14 and 35-43 (as amended below) are allowed.

Note: It is noted that the claim amendment filed on 9/19/08 inadvertently left out certain appropriate markings (e.g. not underlining the newly added recitations such as "having the amino acid sequence" in step (a) of the instant claim). However, in the interest of "expediting prosecution and reducing cycle time", "Examiners may use an examiner's amendment to correct a non-compliant amendment filed by the applicant if the amendment would otherwise place the application in condition for allowance." See MPEP 1302.04.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Charles P. Landrum on 9/26/08. See the attached Interview Summary.

The application has been amended as follows:

Claim 14 is rewritten as follows:

“A method for selecting a compound that modulates an activity of an SCN3A sodium channel comprising:

(a) contacting a composition comprising said SCN3A sodium ion channel protein having the amino acid sequence as set forth in SEQ ID NO:67, wherein the asparagine residue at amino acid position 43 is deleted or the valine residue at amino acid position 1035 is an isoleucine, with at least one test compound;

(b) assaying the activity of the sodium ion channel in the presence of the at least one test compound;

(c) comparing the activity of the sodium ion channel in the absence of the at least one test compound;

(d) selecting a compound that modulates the activity of the sodium ion channel as compared to the activity in the absence of the at least one test compound.”

Oath/Declaration

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c). See Page 3 of the Oath/Declaration, where a non-initialed and non-dated alteration was made.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue Liu whose telephone number is 571-272-5539. The examiner can normally be reached on M-F 9am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James (Doug) Schultz can be reached at 571-272-0763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Sue Liu/
Patent Examiner, AU 1639
9/26/08